

UNITED STATES GOVERNMENT

# Memorandum

DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

DATE: JUL 17 1978

SUBJECT: INFORMATION: Bus Shelters with  
Commercial Advertising in Right-of-Way

In reply  
refer to: HCC-1

FROM : Chief Counsel

TO : Mr. Karl S. Bowers  
HOA-1 Acting Federal Highway Administrator  
ATTN: Mr. L. P. Lamm  
HOA-3 Executive Director

It came to the attention of the Senate Public Works Committee, through Senator Bentsen, that Federal Highway Administration had taken a position that advertising on bus shelters was an impermissible encroachment within the rights-of-way of Federal-aid highways, including many urban streets. The City of Houston is on the verge of entering into a contract with a private company for an installation and maintenance program with advertising panels, similar to the arrangement in New York City.

FHWA was invited to meet with staff representatives for the Public Works Committee to discuss the problem on July 12, 1978. Attorneys from my office and OST, together with the Director, Office of Traffic Operations, attended the meeting. Senator Bentsen's Legislative Aide, and the majority and minority staff counsel were also present.

They discussed the background of the situation, how FHWA is necessarily involved, and why we believe it should be handled administratively without benefit of a statutory amendment.

The Committee is prepared to offer an amendment when the Highway bill reaches the floor about the first of August, but the present form of the amendment is not acceptable. (It provides generally that notwithstanding any provision of law to the contrary, advertising on transit shelters is not a violation of Title 23.)

The staff was apparently satisfied that the matter should be handled administratively, and they were confident that the amendment could be killed upon a demonstration of resolve on the part of the Secretary or the Administrator. They suggested that a document be prepared which could be offered to the Committee as assurance that FHWA was in control of the situation.

It was fully understood that our disposition would be permissive toward the bus shelter programs, but that we did not wish to relinquish control of the right-of-way entirely.

The authority to make determinations under the provisions of 23 CFR 1.23 had been delegated to the Regional Administrators with additional authority to redelegate to the divisions as recently as December 1977. The previous FHWA position was set forth in a memo to Region 5 responding to an inquiry from the State of Minnesota. Copies of the memo were then circulated to Regions 1-10 on April 26, 1978. Technically, this procedure violated the delegation of authority under the December 1977 directive (FHWA Order 1-1, Chg. 101, Part I, Chapter 5, Para. 36).

We propose, therefore, to distribute a memorandum to all Regional Administrators over the signature of the Acting Administrator explaining the bus shelter programs, reinforcing the delegation of authority with general guidelines, and rescinding previous directives inconsistent with the present memo.

The desired result of this strategy is that FHWA will still maintain control over encroachments, but it will be exercisable at the lowest level with appeals available to insure uniform positions. This will reserve our option to prescribe regulations if the need becomes apparent in the event major deviations from the present shelter design begin to take shape. It also provides a reasonable basis on which localities can rely to proceed with plans to adopt or reject shelter programs. And finally, it avoids legislation which is hastily considered and may effectively remove any controls we may wish to exercise in the future.

The attached memorandum has been prepared for your signature. It has the concurrence of the Office of Traffic Operations and the Office of Right-of-Way and Environment.

  
Lorenzo Casanova

Attachment